IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUMMONS FOR JUDGMENT NO.941 OF 2004

IN

SUMMARY SUIT NO.2876 OF 2004

Dinesh Toprani. ...Plaintiff.

Versus

M/s.Deepak Education Ltd & Anr. ...Defendants.

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Mr.Y. P. Sharma i/b. Ganesh & Co. for the Plaintiff.
None for the Defendants.

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CORAM : DR. D.Y. CHANDRACHUD, J.

June 19, 2007.

P.C.:

The Plaintiff lent and advanced an amount of Rs. 1.50 lakhs to the Defendant on interest at the rate of 18% per annum, upon which the Defendant executed a receipt dated 28th September 2000. The First Defendant which is a company incorporated under the Companies' Act, 1956, suggested the conversion of the loan amount into Redeemable Preference shares repayable after five years, an offer which the Plaintiff declined on 19th August 2002. An Advocate's notice was addressed by the Plaintiff on 18th October 2002. By a

reply dated 30th October 2002, the First Defendant expressed its inability to repay the amount of loan due to financial difficulty. The First Defendant has executed a loan confirmation letter for the year 2003-04. In para 7 of the Plaint, it has been averred that in the first week of February 2003, the First Defendant issued an undated letter of confirmation of the amount of loan. Accordingly, a suit has been instituted under Order 37 of the Code of Civil Procedure, 1908.

The Defendants have been served with the writ of summons and have entered appearance. However, no reply has been filed to the Summons for Judgment. Counsel appearing on behalf of the Plaintiff has tendered a compilation of the original documents upon which the claim in the suit has been duly established. The claim falls within the purview of Order 37. In any event, the Defendants having failed to advance any defence to the Summons for Judgment, the Plaintiff will be entitled to a decree. The suit shall accordingly stand decreed in terms of prayer clauses (a) and (b) subject to the modification that the Plaintiff will be entitled to interest at the rate of 9% per annum on the principal sum of Rs. 1.50

lakhs from the date of the institution of the suit until payment or realisation. The Summons for Judgment is accordingly made absolute.

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